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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

DON H. LEE,

Plaintiff and Appellant,

v.

COUNTY OF EL DORADO,

Defendant and Respondent.

C061500

(Super. Ct. No.
PC20070061)

Plaintiff Don Lee filed this action for negligence, intentional infliction of emotional distress, and declaratory relief, after his two pit bulls were temporarily seized when they attacked and bit someone. The trial court sustained defendant County of El Dorado's (County's) demurrer and granted its motion to dismiss. Lee filed this appeal and appears before this court in pro per.

We shall affirm the judgment of dismissal because: (1) we conclude Lee did not file a timely claim under the California

Tort Claims Act, (2) because Food and Agriculture Code section 31625 and El Dorado County ordinances 6.12.050 through 6.12.051 are not unconstitutional on their face, (3) because Lee's claims that said statute and ordinances are unconstitutional as applied to him are moot, his dogs having been returned to him, and (4) because Lee's claim that the settlement agreement he entered into with County is unconstitutional is not ripe for adjudication.

FACTUAL AND PROCEDURAL BACKGROUND

Lee's complaint alleged that in 2003 his two dogs were declared potentially dangerous. He alleged that his dogs' potentially dangerous status would have expired in July 2006. However, on November 14, 2005, his dogs were seized by animal control officers as a result of a claim that the dogs had acted aggressively toward two people in a mobile home park. Lee was later informed one of the dogs had bitten a visitor to the mobile home park, but that the bite had not broken the person's skin.

The complaint further alleged that subsequent to the seizure, the superior court held a hearing, at which it was determined that Lee's dogs were vicious. Lee appealed that determination, but prior to the hearing on appeal, the parties entered into a stipulated settlement. The settlement agreement provided that Lee would maintain his dogs in a tightly controlled manner until July 1, 2007, at which time Lee would move out of El Dorado County.

Lee alleged defendant held his dogs for a period of over four months. He alleged he filed a claim under the California Tort Claims Act (Gov. Code, § 900 et seq.) on July 3, 2006.

At County's request, the trial court took notice of the minute order finding Lee's dogs to be potentially dangerous. The court ordered the dogs kept indoors or in a securely fenced yard from which they could not escape and into which children could not trespass, and that the dogs be restrained by a substantial leash if they were off Lee's property. The trial court also took notice of the order following the February 10, 2006, hearing declaring the dogs vicious.

County demurred to Lee's first three causes of action for negligence and intentional infliction of emotional distress on several grounds including: (1) governmental immunity, (2) failure to file a timely claim under the California Tort Claims Act, (3) no breach of duty, (4) no breach of the statute or ordinance, and (5) uncertainty.

County also filed a motion to dismiss the entire complaint, including the causes of action for declaratory relief on the grounds that Lee lacked standing to sue since his dogs are no longer impounded, the ordinance and statutes are constitutional, and the sixth cause of action relating to the settlement agreement was not ripe for adjudication.

The trial court sustained the demurrer on seven separate grounds, with no leave to amend. The trial court also granted the motion to dismiss. The grounds were that the fourth and fifth causes of action stated only unsupported conclusions of

law, and the sixth cause of action was not ripe. The court also found that Lee lacked standing to challenge the ordinances and statute since his dogs had been returned to him.

DISCUSSION

I

Demurrer

We conclude the trial court properly sustained County's demurrer on the ground that Lee did not file a timely claim. Thus, we need not consider the other issues raised on demurrer.

All claims for money or damages against local public entities must be presented as set forth by statute. (Gov. Code, § 905.) A claim relating to a cause of action for injury to a person's personal property must be presented within six months after the accrual of a cause of action. (Gov. Code, § 911.2.) A dog is considered personal property. (Civ. Code, § 655.) Any cause of action Lee may have had for the wrongful seizure and impoundment of his property accrued when the property was seized, and the complaint alleged this occurred on November 14, 2005. Accordingly, any claim for damages based on the wrongful seizure and impoundment had to be filed by May 14, 2006. The complaint alleged the claim was filed on July 3, 2006, well past the six month limit.

Failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a suit against the public entity. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) Demurrer for failure to state a cause of action is proper where the complaint fails to allege facts

demonstrating or excusing compliance with the claim presentation requirement. (*Ibid.*) Although Lee asserted that his claim was timely presented, the alleged facts demonstrate otherwise. The trial court correctly sustained the demurrer.

II

Motion to Dismiss

A. Facial Challenge

Lee's fourth cause of action for declaratory relief sought a declaration that Food and Agriculture Code sections 31601 through 31683 were facially invalid for failing to afford due process before seizure, and invalid as applied to Lee for failure to afford due process before seizure and failure to provide for a prompt post-seizure hearing. Lee's fifth cause of action alleged El Dorado County Ordinance No. 4608 suffered the same infirmities.

Due process requires a dog owner have notice and a hearing prior to the seizure of a dog unless there is need for prompt action. (*Phillips v. San Luis Obispo County Dept. Etc. Regulation* (1986) 183 Cal.App.3d 372, 376.) Lee cannot state a cause of action that either the statutory scheme or the ordinance is facially invalid on this ground because both contain a requirement for a hearing.

Food and Agriculture Code section 31621 provides that an owner must be given notice and a hearing prior to a determination that the dog is potentially dangerous or vicious. However, a dog may be seized prior to a hearing if an investigation reveals probable cause to believe the dog poses an

immediate threat to public safety. (Food & Agr. Code, § 31625.) In such case the hearing must be held after the dog is impounded. (*Ibid.*) El Dorado County Ordinance No. 6.12.050 A is in accord. These provisions satisfy due process, and Lee has no grounds for a facial challenge to the statutes or ordinance.

B. As Applied Challenge

Lee's challenge that the statute and ordinances as applied to him violated his due process are moot because the complaint indicates the dogs are no longer in custody. The trial court ruled that Lee had no standing to challenge the statute and ordinances as applied to him because the dogs were no longer impounded. The trial court's rationale is correct, but this is more properly described as an issue of mootness. Code of Civil Procedure section 1060 provides that a party may bring an action for declaratory relief "in cases of actual controversy relating to the legal rights and duties of the respective parties[.]"

It is an idle act on the part of the court to make a declaration of the rights and duties of the parties where the controversy has become moot and no actual controversy exists. (*Pittenger v. Home Sav. and Loan Ass'n of Los Angeles* (1958) 166 Cal.App.2d 32, 36.) Where some event occurs that deprives the controversy of its life, the issue is moot. (*Giraldo v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 257.) In this case the event that occurred was the release of Lee's dogs, an event he alleged to have occurred approximately four months after the dogs were impounded. Declaratory relief operates prospectively, not to redress past

wrongs. (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 848.) It is used to prevent injustice, and no such prevention is possible here. (*Ibid.*) Therefore, the declaratory relief causes of action relating to the constitutionality of the statute and ordinances as applied to Lee are moot.

III

Compliance with Settlement Agreement

Lee's sixth cause of action requested a declaration that the settlement agreement provision that he relocate away from El Dorado County is "unconstitutional under the Constitution of the State of California as well as the Constitution of the United States." He alleged that pursuant to the terms of the agreement he was to relocate by July 1, 2007, and that as of the date of the complaint he had not moved.

The trial court found the matter not ripe for adjudication, since defendant had taken no action to enforce that particular provision of the settlement agreement. The Due Process Clause limits State action. (*DeShaney v. Winnebago County Dept. of Social Services* (1989) 489 U.S. 189, 195 [103 L.Ed.2d 249, 258].) Thus, in the absence of any action to enforce the terms of the agreement, there can be nothing to declare unconstitutional. We agree with the trial court and further take judicial notice of our own records which indicate that Lee's current address is outside El Dorado County. (Evid. Code, §§ 452, subd. (d), 459.) There being no allegation that County has taken action to enforce the relocation requirement of the

settlement agreement, we conclude the matter is not ripe for adjudication.

Lee argues he can amend his complaint to cure the defects; however, none of the amendments he proposes would cure the defects found by the trial court and upheld on appeal.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondent.

BLEASE, Acting P. J.

We concur:

RAYE, J.

BUTZ, J.